

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2197 - SB 2394

February 18, 2014

SUMMARY OF BILL: Requires the Central Procurement Office (CPO) to establish and maintain an online database that includes, but is not limited to, a description of any contract and services being purchased in the state; name of the contractor, and any and all subcontractors; and a list of private contractor employees for each contract, reflected as full-time equivalent positions, the hourly wage rate of the employees, and the number of private contractor employees and consultants for the current and previous fiscal years. Requires this compiled information to be reflected in an annual service contractor expenditure budget accompanying the Governor's budget, detailing the total spending on total service contracts for the state. For each service contract, \$25,000 or more, between a public agency and a person or company for the performance of a governmental function shall provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function and indicate that such records and files are subject to the public records laws.

Requires any contractor doing business with an agency or department to keep and maintain the public records that ordinarily and necessarily would be kept by the agency in order to perform the service or activity; provide the agency with access to such public records on the same terms and conditions that the agency would provide the records and at a cost that does not exceed costs as defined in the public records laws; and abide by the open meetings provisions of Title 8, Chapter 44. Prior to a contract being finalized, requires the contracting agency to prepare a request to the governing body of the agency for an appropriation and any authority that is necessary for the contracting agency to hire personnel and obtain resources necessary to oversee and monitor performance of service contracts and enforce other conditions required by law. Prohibits any procurement from proceeding unless the necessary appropriation and authority have been granted.

Requires the contracting agency, for service contracts, to keep a record to the cost analysis and findings that the agency makes for each procurement, along with the basis for the decision to proceed with the procurement; properly ensure that the contractor is providing services as required by the contract and within the costs established in the contract; enforce performance standards established by the contract; collect and provide copies of the records required by law; and ensure that any and all aspects of the contract are properly enforced. Requires any service contract to incorporate specific performance criteria and cost parameters. Requires the contractor to submit quarterly reports to the CPO on the contractor's compliance with the performance criteria and actual costs incurred. Authorizes cancellation of any service contract if the contractor fails to comply with the performance criteria and other requirements set out in the contract and if annual costs exceed those established by the contract.

Prohibits service or asset contracts from unduly restricting the government from taking actions in the public interest and from unfairly placing the burden of risk on taxpayers. For purposes of this section: prohibits contracts from providing for guaranteed occupancy rates for private prisons, dormitories, and any other contracted facility; no contract shall prohibit a government entity from maintaining, improving, or building public infrastructure; no contract shall penalize a jurisdiction if a contractor loses revenue as a result of natural or man-made emergencies such as acts of terrorism or acts of God; requires any increase in fees or charges for public services to be submitted to the governing body of the respective local jurisdiction for approval; and requires the decision to approve or disallow increases to be made in a public manner.

Prohibits any private entity that has a contract with the state from having an adjudicated record of substantial or repeated willful noncompliance with any relevant federal, state, or local statute or regulation, including payment of taxes or other payments owed to the public entity. Prior to the award of a contract, requires bidders to submit attestation documentation to the CPO regarding compliance to such laws. Requires the CPO to make public a cost comparison prior to entering into a private service contract. Prohibits any agency from entering into a service contract unless the proposed contract is projected to result in overall cost savings to the state of at least 10 percent less than the projected costs of having the service provided by public employees. Prohibits cost savings from being derived from a bidder's failure to provide health and retirement benefits and adequate wages to its employees. Requires wages and benefits to be included in any bid and actual wages and benefits to be reported to the contracting agency on a quarterly basis. Such information shall be public record and itemized per employee of the contractor.

Requires the CPO, prior to entering into a private contract for public services, to produce a thorough analysis of the possible impacts of the private contract, including but not limited to, possible loss of employment or income in a local area; impacts on social services in the local area; impacts on public assistance programs; economic impact on local businesses; any possible loss or increase in tax revenue for the local area; and any environmental impacts that may result from the private contract, including any upgrades or possible degradation. Requires the CPO findings to be posted on the CPOs website and requires the CPO to conduct public meetings in order for all citizens to have an opportunity to address concerns and obtain information.

Prohibits a contract from being automatically renewed without utilizing the competitive bidding process. If an in-house bid or proposal meets the cost and performance criteria specified in the law or the request for proposal, it shall be deemed the most qualified. Prior to outsourcing any work to a foreign jurisdiction outside the United States, both the in-house and proposed contractors' costs and scope of work shall be estimated by the CPO and provided to affected bargaining representatives, along with all source information on all cost estimates. Requires the bargaining representative to be provided a full and fair opportunity to present its own cost estimates and recommendations for the new work processes.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$50,300/One-Time
\$759,700/Recurring**

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Assumptions:

- According to the CPO, the cost to design, develop, and test the additional fields required by the proposed legislation will cost \$48,000 (4 fields x 120 hours per field x \$100 per hour). The cost to write the queries to collect the necessary data is \$2,080 (80 hours x \$26 per hour). The cost to change the CPO website to display the required data is \$200 (8 hours x \$25 per hour). The total one-time cost in state expenditures is \$50,280 (\$48,000 + \$2,080 + \$200).
- The recurring cost to host 10 gigabytes of space is \$420 annually (\$35 per month x 12 months). The cost to upload new query results to the CPO website is \$312 annually (\$26 x 12 months).
- The cost to obtain the required data from the vendors for each contract is estimated at \$160 (8 hours x \$20 per hour). For the past two years, the State awarded an average of 3,297 service contracts each fiscal year. The estimated cost to obtain the required data for an average of 3,297 contracts each year is \$527,520 (\$160 x 3,297).
- According to the CPO, it will need to hire four additional sourcing analysts to create a public cost comparison prior to entering into services contracts; to provide the detailed possible impacts analyses; and to handle the intake and maintenance responsibilities for the quarterly reports and attestations. The recurring cost for the four positions is \$231,404 (\$42,000 salary + \$15,851 benefits and insurance x 4 analysts).
- The total recurring cost for the CPO is \$759,656 (\$420 + \$312 + \$527,520 + \$231,404).
- The Department of Correction (DOC) currently has contracts that contain guaranteed occupancy rates for the operation of private prisons based on the number of beds available to the State; however, these contracts allow for the number of beds to be changed with a 180-day advance notice.
- DOC assumes removing the language which guarantees payment for a set capacity, regardless how many beds are filled by the State, future contracts will have staggered rates based on the population of state offenders within the facility causing a not significant impact to the Department.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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